

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
MariTEL Mississippi River, Inc.)	File Number EB-02-OR-052
Licensee of Maritime Public Coast Station)	NAL/Acct.No. 200232620006
WPOJ535 near Pointe a la Hache, Louisiana)	FRN 0003-4734-51
Washington, DC)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: July 3, 2002

By the Enforcement Bureau, New Orleans Office:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture*, we find that MariTEL Mississippi River, Inc. ("MariTEL"), licensee of public coast station WPOJ535, willfully and repeatedly violated Sections 1.5 and 80.90 of the Commission's Rules ("Rules"),¹ by failing to ensure that correspondence from the Commission mailed to the address of record would reach the licensee, and by failing to immediately suspend transmissions upon detection of a transmitter malfunction. We conclude that MariTEL is apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000).

II. BACKGROUND

2. On April 2, 2002, the FCC Enforcement Bureau's New Orleans Field Office ("New Orleans Office") received a complaint from the United States Coast Guard in Gulfport, Mississippi that a continuous radio signal on VHF marine channel 16 (156.8 MHz) was interfering with their ability to communicate with vessels. Agents from the New Orleans Office responded in a radio direction finding vehicle and determined that the source of the interfering signal was a malfunctioning transmitter operated by MariTEL, call sign WPOJ535, from an antenna structure near Pointe a la Hache, Louisiana. The agents contacted Mark Watros of MariTEL by telephone at approximately 6:30 PM, advised him of the malfunctioning transmitter, and requested that the transmissions be immediately suspended. However, the transmissions from MariTEL's transmitter were not suspended until 7:20 AM on April 3, 2002, more than 12 hours after MariTEL was notified of the malfunction. During this period, interference was present on the VHF marine distress, safety and calling channel.

3. On April 12, 2002, a Notice of Violation ("NOV") was mailed to the address of record for MariTEL's license WPOJ535 noting a violation of Section 80.90 of the Rules. The NOV was returned by the United States Post Office ("Post Office") marked "Attempted Not Known."

4. On April 30, 2002, the NOV was again mailed to the address of record and a second address obtained from MariTEL. The copy sent to the address of record was again returned by the Post Office marked "Attempted Not Known." No reply to either correspondence has been received.

¹ 47 C.F.R. §§ 1.5, 80.90.

III. DISCUSSION

5. Section 1.5 of the Rules requires that licensees furnish the Commission with a mailing address for the Commission to use to serve correspondence to the licensee and additionally to take steps to make sure Commission correspondence delivered to such address reaches the licensee. Correspondence sent to MariTEL's address of record on April 12, 2002, and April 30, 2002, was returned by the Post Office as undeliverable.

6. Section 80.90 of the Rules requires that transmission be suspended immediately upon detection of a transmitter malfunction, and remain suspended until the malfunction can be corrected. Transmissions from a defective transmitter causing interference to the VHF marine safety, distress, and calling channels were reported to MariTEL at approximately 6:30 PM on April 2, 2002, but were not suspended until 7:20 AM the next day.

7. Based on the evidence before us, we find MariTEL Mississippi River, Inc. willfully² and repeatedly³ violated Sections 1.5 and 80.90 of the Rules by failing to insure that Commission correspondence sent to the address provided by the licensee is delivered to the licensee, and failing to suspend transmissions immediately upon detecting a malfunctioning transmitter.

8. Pursuant to Section 1.80(b)(4) of the Rules, the base forfeiture amount for failure to maintain an accurate mailing address for the Commission's use (failure to file required forms or information) is \$3,000, and failure to immediately suspend transmitter operations (unauthorized emission) is \$4,000.⁴ Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), requires us to take into account "...the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay and other such matters as justice may require."⁵ Considering the entire record and applying the statutory factors listed above, this case warrants a \$7,000 forfeiture.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁶ and Sections 0.111, 0.311 and 1.80 of the Commission's Rules,⁷ MariTEL Mississippi River, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of seven thousand dollars (\$7,000) for willful and repeated violation of Sections 1.5 and 80.90 of the Commission's Rules.

10. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this *Notice of Apparent Liability*, MariTEL Mississippi River, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

² Section 312(f)(1) of the Act, 47 U.S.C. §312(f)(1), which applies equally to Section 503(b) of the Act, provides that "[t]he term 'willful,' when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act...." See *Southern California Broadcasting Co.*, 6 FCC rcd 4387

³ The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

⁴ 47 C.F.R. § 1.80(b)(4).

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. §§ 0.111, 0.311, 1.80.

11. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FRN and NAL/Acct. No. referenced in the letterhead above.

12. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE NAL/Acct. No. and FRN referenced in the letterhead above.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. Requests for payment of the full amount of this *Notice of Apparent Liability* under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

15. IT IS FURTHER ORDERED THAT a copy of this *Notice of Apparent Liability* shall be sent by regular mail and Certified Mail Return Receipt Requested to MariTEL Mississippi River, Inc. at 701 Pennsylvania Avenue, NW, Washington, D.C. 20004. An additional copy shall be sent by regular mail and Certified Mail Return Receipt Request to MariTEL at 2318 Pass Road, Suite 6, Biloxi, Mississippi 39531.

FEDERAL COMMUNICATIONS COMMISSION

James C. Hawkins
District Director, New Orleans Office
Enforcement Bureau

⁸ See 47 C.F.R. § 1.1914.